

SERIO EXPLORATION COMPANY

IBLA 76-604

Decided July 26, 1976

Appeal from decision of Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease C-15390.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence. Late payment of the rental is not justified by confusion concerning proper processing of the rental payment which resulted when the duty to make payment was transferred from the company's land manager to its accountant.

2. Oil and Gas Leases: Reinstatement -- Generally

The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for late payment.

APPEARANCES: J. R. Meason, President of Serio Exploration Company, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

Serio Exploration Company appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated April 16, 1976, denying their petition for reinstatement of oil and gas lease C-15390. The basis for the denial was that appellant's reasons for failure to make timely payment of the rental were not justifiable and did not show reasonable diligence, as required by 30 U.S.C. § 188(c) (1970).

Appellant's lease was issued April 1, 1972, so payment of the annual advance rental was due on or before April 1, 1976. Payment was not received by the BLM until April 5, 1976. As appellant's payment was not made on or before April 1, 1976, the anniversary date of the lease, the lease terminated by operation of law as provided by 30 U.S.C. § 188(b) (1970), and appellant received a notice of termination of its lease.

Appellant filed a petition for reinstatement of its lease on April 15, 1976, in which it set forth the following contentions:

Serio Exploration Company operates with a limited staff consisting of a President, a Secretary-Treasurer, an Accountant and a Secretary. Up until about five months ago, we had a Land Manager who handled all matters concerning leases. When our Accountant received the notice of payment due, he was not familiar with this lease, and it was necessary for him to verify that this was our cost. This notice was addressed to 331 Market Street which is the address of Barnett Serio Exploration Company which is a separate company and not affiliated at all with Serio Exploration Company. Serio Exploration Company is located on Highway 61 South and many times there is confusion as to whom an invoice actually belongs.

In trying to verify this lease, our Accountant noticed that on February 23, 1976, we paid a rental in the amount of \$ 640.00 on Serial No. C 14771 which according to his records was the same lease (Trail Creek) and didn't understand why another rental would be due. Several days passed before he could contact our former Land Manager and verify this cost. As soon as this verification could be made, a check was written on March 30, 1976.

The State Office denied the petition because appellant's failure to make timely payment of the rental was not justifiable and did not show reasonable diligence.

In its statement of reasons, appellant essentially reiterates the contentions made in his petition for reconsideration, and further explains that it had formerly occupied offices at 331 Market Street, but that it had not been a tenant there for sometime. Thus, appellant reasoned, the notice from BLM was delayed in being delivered to the Company. Appellant adds that it has spent \$ 591,319.70 in drilling operations <sup>1/</sup> and that cancellation of the lease is a harsh and unjustifiable application of the delay rental payment requirements. Appellant suggests that it would be inequitable to cancel the lease and possibly give it to another party when Serio has carried the burden of risks involved in determining the possibility of production on the subject lease.

[1] The Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 188(c) provides the lease may be reinstated if, among other requirements, it has been shown to the satisfaction of the Secretary that the failure to make timely payment was "either justifiable or not due to a lack of reasonable diligence on the part of the lessee \* \* \*."

Reasonable diligence generally requires sending rental payments sufficiently in advance of the anniversary date of the lease to allow for normal delays in the collection, transmittal and delivery of the payment. 43 CFR 3108.2-1(c)(2); Samuel J. Testagrossa, 25 IBLA 64 (1976); Constitution Petroleum Company, Inc., 25 IBLA 319-323 (1976); Louis Samuel, 8 IBLA 268, 272-73 (1972); aff'd Samuel v. Morton, Civ. No. CV 74-1112-EC (D. Calif. C.D., sum-j-Aug. 26, 1974). The envelope in which the payment was transmitted bears a postmark of April 1, 1976. Appellant did not exercise reasonable diligence by mailing the payment the day it was due. Constitution Petroleum Company, Inc., supra.

Late payment of the rental is not justified by the fact that confusion concerning proper processing of the rental payment resulted when the duty to make the payment was transferred from the company's land manager to its accountant. The complexities of appellant's business operations do not make justifiable for its actions which would not be justifiable if committed by an individual lessee. James Donoghue, 25 IBLA 280 (1976). It is well settled that mere inadvertence or negligence of the lessee's agent or employee is

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<sup>1/</sup> Appellant states the well was drilled and cased during 1972-1973 but failed to achieve commercial production, and operations were suspended in 1973. In 1974 an attempt was made to deepen the well but, "Inclement weather and other conditions prevented the completion of this second attempt and no further drilling was conducted."

not sufficient justification to reinstate a lease terminated for failure to make timely rental payment. Samuel J. Testagrossa, supra; G. Wesley Ault, 16 IBLA 291, 293 (1974).

[2] Regarding the notice of payment due, it was appellant's responsibility to notify BLM of its new address. In any event, appellant has no grounds for complaint, as apparently it did receive the notice sufficiently in advance of the due date to enable it to make timely payment. Even if no notice had been received, this would not have helped appellant. The obligation to pay on or before the anniversary date of the lease arises from the terms of the statute, not from receipt of a courtesy notice from the Bureau of Land Management. James Donoghue, supra; Samuel J. Testagrossa, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

